

BELLSOUTH

Kathleen B. Levitz
Vice President-Federal Regulatory

March 31, 1999

RECEIVED

MAR 31 1999

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1133-21st Street, N.W.
Washington, D.C. 20036-3351
202 463-4113
Fax: 202 463-4198
Internet: levitz.kathleen@bsc.bls.com

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th St. S.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Written Ex Parte in CC Docket No. 98-56 and
CC Docket No. 98-121 /

Dear Ms. Salas:

On March 31, 1999, BellSouth provided the attached documents to Daniel Shiman in response to a request from the staff of the Common Carrier Bureau's Policy and Program Planning Division.

Pursuant to Section 1.1206(b)(1) of the Commission's rules, I am filing two copies of this notice and those documents for inclusion in the record of both dockets identified above.

Sincerely,



Kathleen B. Levitz
Vice President - Federal Regulatory

Attachment

cc: Daniel Shiman (w/o attachment)

BELLSOUTH

Kathleen B. Levitz
Vice President-Federal Regulatory

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1133-21st Street, N.W.
Washington, D.C. 20036-3351
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Internet: levitz.kathleen@bsc.bls.com

March 31, 1999

Dr. Daniel Shiman
Policy and Program Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554


Written Ex Parte in CC Docket No. 98-121

Dear Dr. Shiman:

Attached is the copy of BellSouth's December 22, 1998 Filing in the Louisiana Public Service Commission's proceeding LPSC Docket Number U-22252-C that you requested. If after reviewing this attachment you conclude that you need additional information, please call me at (202) 463-4113.

In compliance with Section 1.1206(b)(1) of the Commission's rules, I have today filed with the Secretary of the Commission two copies of this written ex parte presentation for both CC Docket No. 98-56 and CC Docket No. 98-121 and requested that it be associated with the record of both dockets.

Sincerely,



Kathleen B. Levitz
Vice President - Federal Regulatory

Attachment

cc: Ms. Andrea Kearney

CURRENT STATUS OF REBATE TARIFFS/POLICIES

CABS	Trigger	Penalty	1998 Credits/Rebates
Service Installation Guarantee (FCC Tariff) Regionwide	Failure to meet service date given to customer	Amount equal to the non-recurring charges for the individual service	\$9,307,454
Billing Guarantee (BS Policy) Regionwide	Failure to bill customer within two bill periods of customer effective billing date	Non-recurring and fractional recurring charges older than two bill periods	\$5,233.877
Service Assurance Warranty (BS Policy) Regionwide	Out of service circuit for a given length of time	DS3: OOS > 2 hours = 50% of monthly recurring charge DS1: OOS > 3.5 hours = 50% of monthly recurring charge	\$7,550,634
INTERCONNECTION			
CRIS (Residence/Business)			
MOOSA (BS Policy) Regionwide	Out of Service > 24 hours	1/30 th of monthly service charge times number of days OOS > 24 hours	
Service Technician Customer Satisfaction Program			

NOTE: Preliminary – More information to follow

DRAFT

F/R: 199.0200
Birmingham. AL

January 25, 1999

TO: Elton King, Group President
Mike Cassity, Vice President - Network Operations/North
Ralph de la Vega, Vice President - Network Operations/South
Rick Harder, Vice President and Chief Information Officer
Ike Harris, Vice President and Chief Financial Officer
Bill McNair, Vice President - InterConnection Operations
Scott Schaefer, President - InterConnection Services
Bill Smith, Vice President - Network Strategic Planning & Support

FROM: Fred Hamff, Assistant Vice-President-BellSouth Billing, Inc.

SUBJECT: Access Billing Revenue Losses and Rework Expenses

In December 1998, BellSouth lost \$1,301,408 due to revenue write-offs and incurred \$79,709 in rework expense due to process performance problems. The total financial impact of process performance problems in December was \$1,381,117. For the year 1998, BellSouth lost \$14,541,331 in revenue write-offs and incurred \$878,982 in rework expense. The total financial impact of process performance problems in 1998 was \$15,420,313.

	1994 monthly average	1995 monthly average	1996 monthly average	1997 monthly average	1998 monthly average
Bill Guarantee (gross)	\$117,020	\$216,942	\$159,631	\$275,758	\$436,156
BG (journalized)	N/A	N/A	\$ 8,151	\$ 35,992	\$111,230
BG (revenue recovery)	N/A	N/A	N/A	N/A	\$ 30,455
SIG	\$110,668	\$341,865	\$508,254	\$625,952	\$775,621
SAW	N/A	\$ 67,497	\$213,487	\$394,602	\$629,223
Rework Expense	\$116,491	\$129,697	\$ 66,881	\$ 67,294	\$ 73,249
Troubles Open EOM	58	46	37	33	47
Troubles Closed	18	25	27	17	22

A. Billing Guarantee and Service Installation Guarantee (All departments)

The two components of written-off earned revenues are write-offs due to Billing Guarantee (BG) and write-offs due to Service Installation Guarantee (SIG). Write-off totals due to BG and SIG for December were \$375,342 and \$926,066 respectively. BG and SIG decreased when compared to November 1998. Attachment A tracks BG and SIG revenue write-offs since December 1996. Total write-offs are represented graphically with the BG component displayed in red and the SIG component represented in blue. Revenue write-off figures for each component for the previous month, current month, 1998 year to date, and 1998 monthly average are also displayed.

DRAFT

B. Billing Guarantee by Major Causes (BBI, ICS, Network)

Revenues written-off to Billing Guarantee categorized by Major Causes are presented graphically in Attachment B. Revenues written-off related to Late Posting of Service Orders (blue), Service Order Defects (red), and Usage (white) are displayed individually. Revenues written-off related to other causes such as Correct Records, ICSC-MA, etc., are grouped under the category 'Other' (green). For the two leading causes of write-offs for the current month, write-off figures are displayed for the previous month, current month, 1998 year to date, and 1998 monthly average. Also shown are the top causes for write-offs in 1998. As shown in the graph, write-offs for SOD, other and late posting decreased while usage increased in December compared to November 1998.

C. Service Installation Guarantee (Network and ICS)

Write-offs due to Service Installation Guarantee (SIG) are tracked graphically in Attachments C, D and E. These write-offs decreased in December compared to November 1998. There are several measures for SIG write-offs which include previous month, current month, 1998 year to date, and 1998 monthly average totals.

D. Service Assurance Warranty

Service Assurance Warranty (SAW) write-offs are tracked in Attachments F and G. The SAW write-offs decreased in December when compared to November 1998. Write-off totals for the previous month, current month, 1998 year to date, and 1998 monthly average are also displayed.

E. Hold File Errors (ICS, Network)

Percent of Service Orders rejected by the CABS Billing System (Hold File Errors) and associated rework expenses incurred are tracked in Attachment H. The December Hold File Error defect rate was 4.86%. Rework expense associated with correcting hold file errors was \$79,709 based on a per error expense amount of \$59. The error defect rate and the rework expenses decreased when compared to November 1998. COPE phase 1 and 2, which is an upfront editing system, was deployed in 1/96, phase 3 of COPE was deployed in 1/97 and phase 4 of COPE was deployed in 5/98.

F. CABS Trouble Tickets (IT)

(This report tracks only trouble tickets that were issued by BBI.)

CABS trouble tickets are tracked in Attachment I. The top graph represents the number of unresolved CABS Trouble Tickets at the end of each month. The number of unresolved trouble tickets at the end of December was 73, which was an increase when compared to November 1998. The bottom graph represents the number of CABS Trouble Tickets resolved during each month. The number of trouble tickets resolved during December was 22, which was a decrease when compared to November 1998.

I appreciate your continued attention to these problems that are resulting in financial loss for BellSouth.

Attachments

cc: Odie Donald, Group President
Attached Distribution List

BellSouth Interconnection Services

675 West Peachtree Street
Atlanta, Georgia 30375

**Carrier Network Notification Letter
Customer Letter / Announcement
SN9108**

Date: February 1, 1999

To: All Interconnection Customers

Subject: Switched and Special Access Billing Practice

Effective with the May 1st, 1999 Bill Period, BellSouth's general Billing Guarantee Practice will be changed to guarantee switched and special access customers that BellSouth will bill charges within three (3) billing periods of the date the service was provided.

Exclusions to this policy are outlined on the enclosed Attachment.

If you have any questions regarding this information, please contact your BellSouth Account Team Representative.

Sincerely,

Jim Brinkley - Director
Interconnection Services

Attachment

BELLSOUTH SWITCHED AND SPECIAL ACCESS BILLING PRACTICE GUIDELINES

GENERAL

The Switched and Special Access billing practice applies to Switched and Special Access services billed on the Carrier Access Billing System (CABS) accounts listed below:

<u>CABS Account</u>	<u>Access Service</u>
S	Switched
N	Facility/Special
D	WATS
A	LIDB/CCS7 Signaling

Switched and Special Access charges billed on the "S", "N", "D" and "A" CABS accounts will be billed no later than three bill periods from the date the service is provided, unless expressly specified under "EXCLUSIONS".

Switched Access usage charges (for minutes of use) billed on an "S" CABS account that have been handled or processed by a local exchange company other than BellSouth, including but not limited to meet point billing, will be billed in five bill periods from the date the service is provided, if the other local exchange company has signed the Memorandum of Understanding. The Memorandum of Understanding is a reciprocal agreement concerning the timely exchange of usage between BellSouth and another local exchange company. Where no such agreement exists, BellSouth will process and bill the usage upon receipt from the other local exchange company.

EXCLUSIONS

Certain conditions, as shown below, are expressly excluded from the Switched and Special Access billing practice. BellSouth reserves the right to identify additional exclusions as required.

Billing for local charges is excluded.

Billing from Percent Interstate Usage (PIU) audits or other self-reporting is excluded.

Back billing ordered or approved by a commission is excluded.

Special circumstances that may occur, such as complex restructures, are excluded.

If BellSouth bills on behalf of another local exchange company, revenue belonging to the other local exchange company is excluded.

EXCLUSIONS (Continued)

Where no Memorandum of Understanding (concerning timely exchange of usage) exists between BellSouth and another local exchange company, those Switched Access Usage charges are excluded. In this case, BellSouth will bill for the usage upon receipt from the other local exchange company.

Prepayment of special pricing plans is excluded.

Charges for termination of contracts for special pricing plans are excluded.

Billing delays caused by or arising from special requests of the customer are excluded.

If a customer cannot accept requested access service within 30 days of the original requested service date, the order must be canceled or billing must commence. This is in accordance with Section 5.3 (C) (1) of BellSouth's access services tariffs (interstate and state). If the customer's requested due date is more than three bill periods past the original due date, any recurring or nonrecurring charges that are billed beyond three bill periods as a result of the customer's request are excluded.

Billing and Collection services are excluded due to the dependency of receiving message files from interexchange customers as well as separately negotiated arrangements with interexchange customers.

In the event of a Work Stoppage, the Switched and Special Access billing practice will be suspended until three months after the end of the Work Stoppage.

Billing delays that are a result of acts of God are excluded.

Billing delays resulting from an equipment failure not due to any fault of BellSouth are excluded.

ROUTING/APPROVAL FORM FOR CUSTOMER NOTIFICATION LETTERS

SN: 9108

Date Received:

Author: Ann K. Smith

Tel Number: 404-927-7599

Date required on Internet *: not before 1/15/99**

Do you require hard copy distribution (US Mail) *: no**

For US Mail - RC to charge time & expenses: [Enter RC if US Mail]

***** If less than 14 days, then the following must be attached:**

- 1) An explanation of why it was not possible to give 14 days advance notice, and**
- 2) An assessment of the harm to BellSouth that would occur if this letter were posted routinely (in 14 days).**

***** If you require US Mail distribution the following must be attached:**

- 1) An explanation of why US Mail distribution is required for this letter, and**
- 2) A description of to whom the letters should be sent -- either a customer list or a group description.**

Approved By: Process Manager
Comments: ~

Date:

Approved By: Laura Gondolfo
Comments:

Date:

Approved By: Amanda Grant
Comments:

Date:

Approved By: John McCain
Comments:

Date:

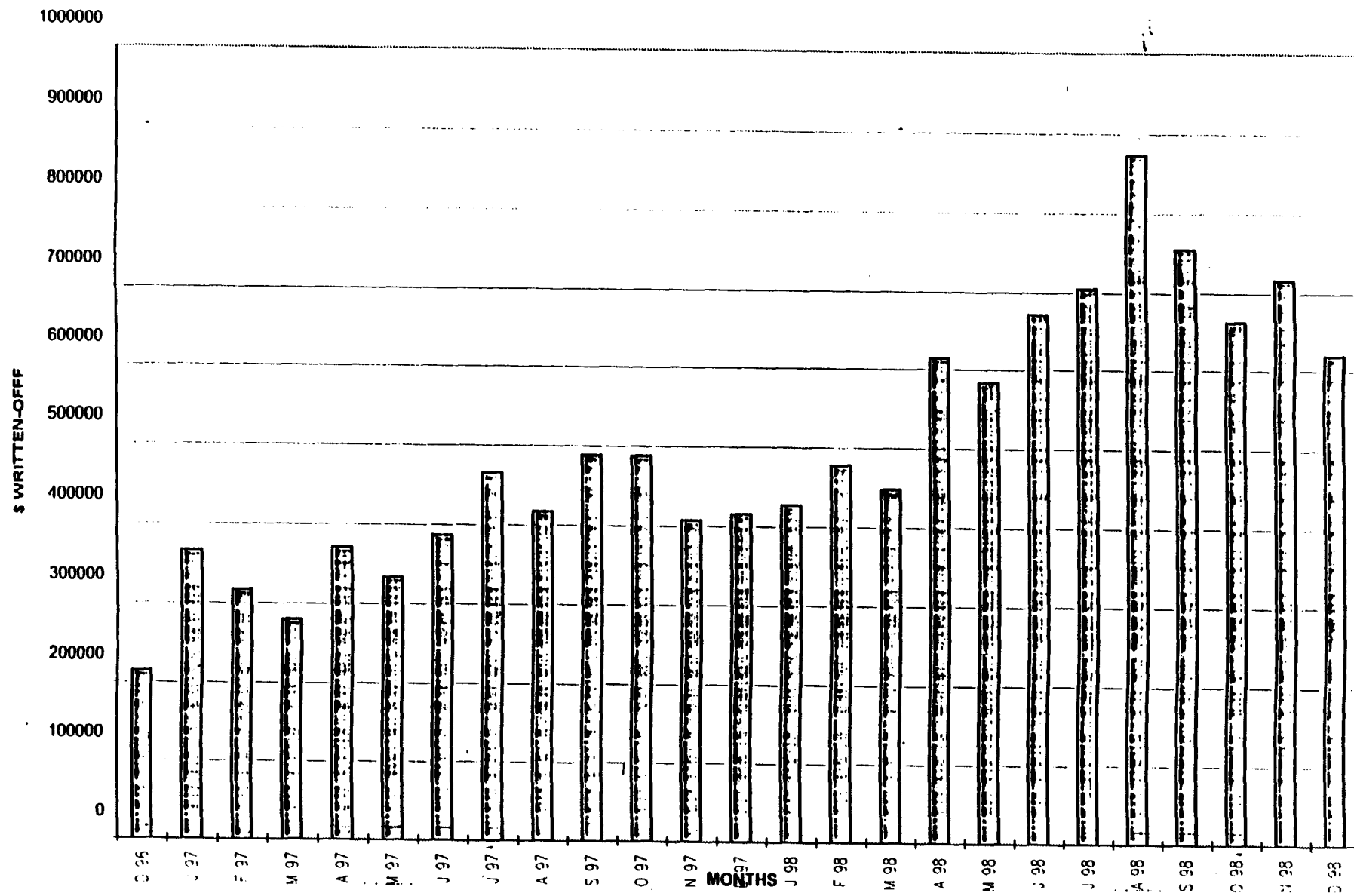
Approved By: Jim Brinkley
Comments:

Date:

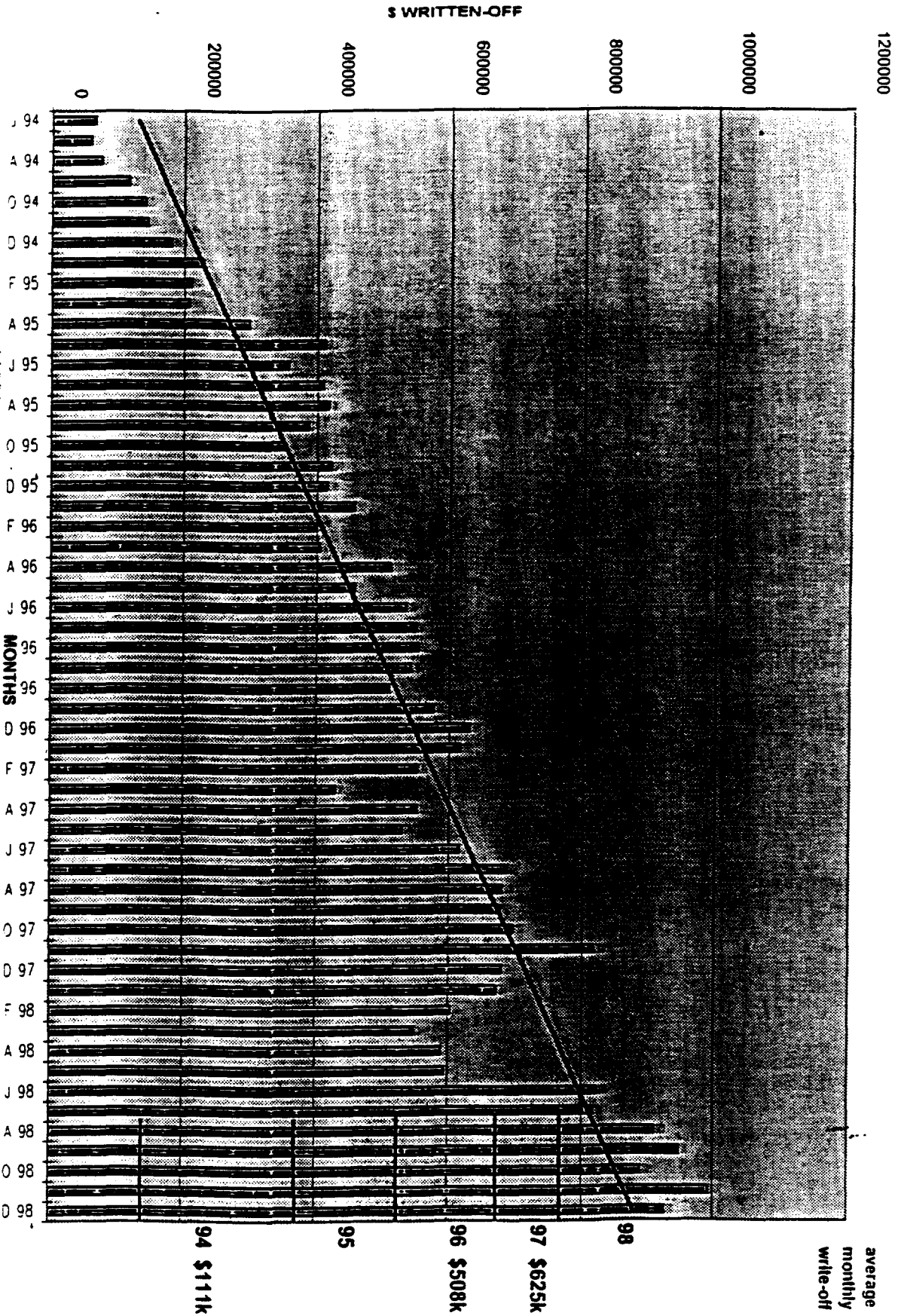
Date Sent To WEB Master:
Date Posted to WEB:

Date Sent To Mail Room:
Date Mailed:

\$ WRITTEN-OFF TO SERVICE ASSURANCE WARRANTY
December 1996 through December 1998



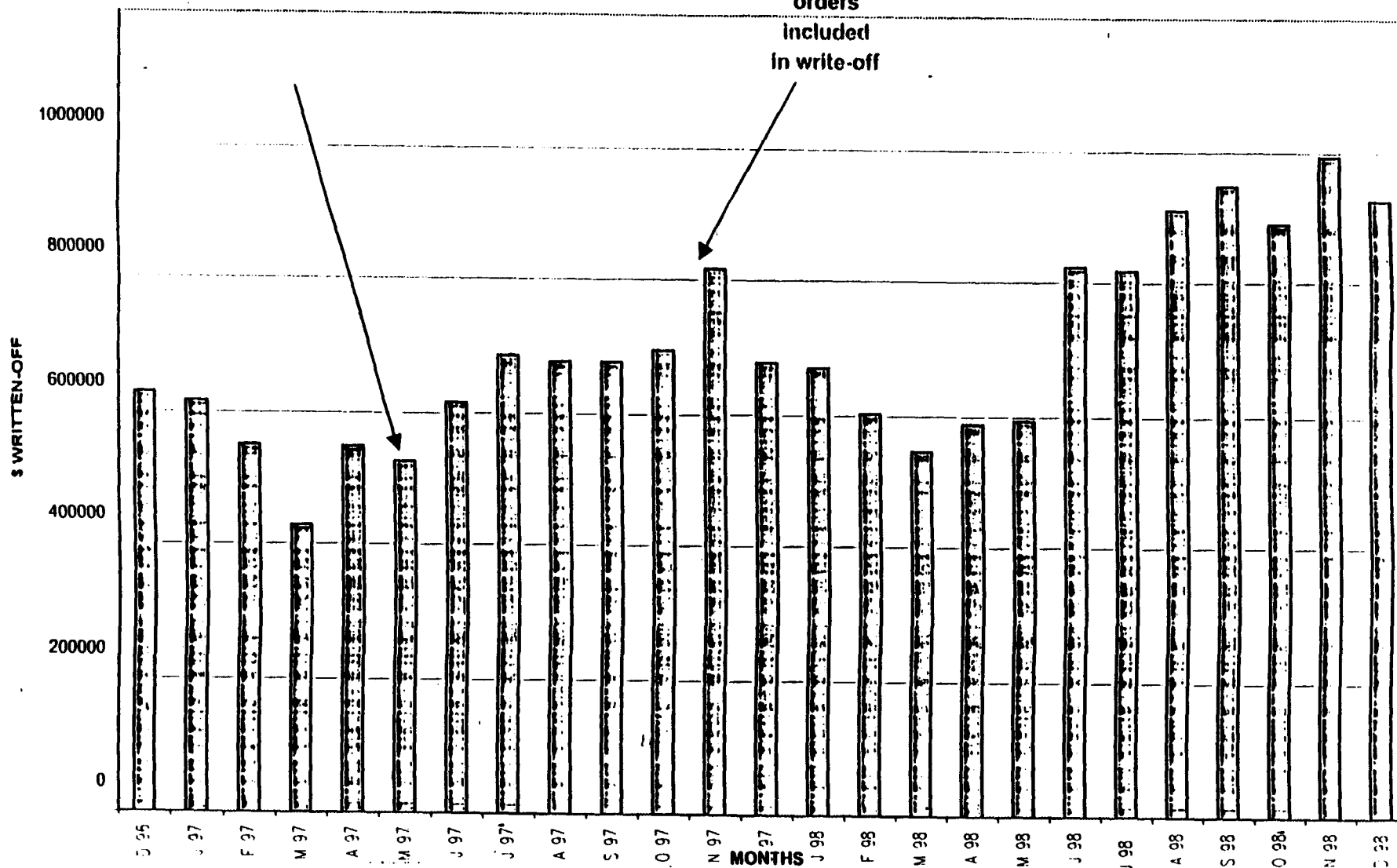
**\$WRITTEN-OFF TO SERVICE INSTALLATION GUARANTEE
JUNE 1994 THROUGH DECEMBER 1998**



\$ WRITTEN-OFF TO SERVICE INSTALLATION GUARANTEE **December 1996 through December 1998**

CHANGES TO
 SIG PROGRAM
 TO DECREASE
 THE WRITE-OFF

0-4 day
 orders
 included
 in write-off



C. Parlato

LONG LAW FIRM, L.L.P.

BATON ROUGE • WASHINGTON, D. C.

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C. Kris Kirkpatrick
Michael A. Patterson
Joseph E. Juban
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(1) Louisiana and District of Columbia
*A Professional Law Corporation
**A Limited Liability Company

January 11, 1999

VKM		
WTM		
EC		

Ms. Susan Cowart
Louisiana Public Service Commission
P. O. Box 91154
Baton Rouge, LA 70821-9154

Re: #22252C - BST Performance Measurements
Our File no. 700-071

Dear Ms. Cowart:

Enclosed please find an original and two copies of the Comments prepared on behalf of AT&T Communications of the South Central States, Inc. in the above entitled matter.

Please return to me a date stamped copy.

With kind personal regards,

Very truly yours

David L. Guerry

DLG/tp

Enclosures

cc: Patricia McFarland
Service List

RECEIVED

JAN 12 1999

LEGAL DEPT.
N.O. LA.

BEFORE THE
LOUISIANA PUBLIC SERVICE COMMISSION

IN RE:)
) Docket No. U-22252, Subdocket C
BellSouth Telecommunications, Inc.)
Service Quality Performance Measurements)

COMMENTS OF AT&T COMMUNICATIONS
OF THE SOUTH CENTRAL STATES, INC.
JANUARY 11, 1999

AT&T Communications of the South Central States, Inc. ("AT&T") hereby submits its comments pursuant to the December 2, 1998 Louisiana Public Service Commission ("Commission") Notice in this Docket. AT&T provides comments in the following areas set forth in the Commission's Notice regarding its January workshop: 1) Response to BellSouth's December 22, 1998 filing ("BellSouth Comments") regarding Performance Benchmarks, 2) Consequences, Enforcement and Dispute Resolution, and 3) Raw Data Issues.

I. BELLSOUTH'S PROPOSAL THAT THE COMMISSION SHOULD NOT ESTABLISH FORMAL BENCHMARKS AT THIS TIME SHOULD BE REJECTED AND THE COMMISSION SHOULD ADOPT THE LOCAL COMPETITION USER'S GROUP'S ("LCUG") PERFORMANCE STANDARDS IN THE ABSENCE OF ILEC RESULTS.

A. BellSouth's Refusal to Comply with this Commission's Order Should Not Be Tolerated.

In its General Order in this docket dated August 31, 1998 at page 3 ("Commission Order"), the Commission decided to "establish performance benchmarks only where no analogous retail service exists by ordering BellSouth to conduct special studies to establish the performance level. Such studies should rely on experiences drawn from BST's operations and be completed by November 30, 1998." The Commission then

granted BellSouth additional time until December 22, 1998 to complete and present these studies. Four months after the Commission's Order (which BellSouth did not appeal), in its December 22, 1998 Filing, BellSouth states, "the Commission simply does not have the historical experience or data necessary to establish formal benchmarks that will be applicable in all cases." The Commission never purported to have the historical experience; that is why it directed BellSouth to conduct the studies. It also is true that the Commission does not have the data--because BellSouth has not complied with the Commission's Order.

BellSouth attempts to support its position by suggesting that the Federal Communications Commission ("FCC") agrees with its position. See BellSouth Comments at page 3. However, what the FCC said in April 1998, was that "it did not have sufficient information in the record to consider proposing performance standards at this time."¹ The more current and relevant FCC position in this matter, which BellSouth did not include in its filing, is contained in the FCC's Louisiana Order dated October 13, 1998²:

"In other areas, we note that the Louisiana Commission is making important strides in promoting and advancing competition in the local exchange market. For example, the Louisiana Commission recently adopted service quality performance measurements, *standards* (emphasis added), and evaluation criteria concerning incumbent LECs' success in opening their local markets. We applaud such actions by state commissions to measure and evaluate performance data in order to ensure that BOCs are in fact complying with statutory requirements."

¹ Federal Communications Commission, CC Docket No. 98-56, Commission's Notice of Proposed Rulemaking released April 17, 1998. In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, Para. 125.

² Federal Communications Commission, CC Docket No. 98-121, Commission's Memorandum Opinion and Order, released Oct. 13, 1998. In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Louisiana, Para. 22.

B. BellSouth's Rationale for Delay is Without Merit

BellSouth states on one hand that there is insufficient unbundled network element ("UNE") activity to develop benchmark data, but on the other hand, there is ample evidence regarding UNEs to determine that BellSouth is providing non-discriminatory treatment in its provision of UNEs to CLECs. Importantly, BellSouth does not explain what it has compared to determine that they are providing "non-discriminatory" treatment. See BellSouth Comments at page 4. In support of its position that there is insufficient data, BellSouth cites that there have been only 767 loops provisioned in Louisiana. AT&T is of the opinion that 767 occurrences of an activity are sufficient to document how long it takes to perform the activity. Further, benchmark studies should not merely record current practice, but look at analogous BellSouth activities and the design of efficient processes. While BellSouth states in Exhibit 4 of its Comments that "product teams also compare existing process intervals for similar services, where possible, to assist in determining a deliverable product or service interval," AT&T sees no evidence of such analysis affecting a service interval in a way that creates comparable performance in the provision of UNEs to CLECs to the provisioning of retail service that BellSouth provides itself.

For example, BellSouth reports in its Louisiana November performance results found on its Internet site that it installs residential POTS service (no dispatch, < 10 lines) for itself in an average of 1.04 days. However, in its Products and Services Interval Guide for CLECs, BellSouth asserts that seven business days are required to provide the two wire analog voice grade loop that CLECs need to provide the same residential service using UNEs. ("No dispatch" includes orders for new service that do not require a dispatch. As BellSouth does not disaggregate by order activity type, this is the most precise comparison that can be performed). The inequities of BellSouth's self-proclaimed targets that apparently reflect grossly inefficient and cumbersome processes that are incapable of affording a meaningful opportunity to compete, are further

illustrated by the fact that it takes two days to get an order confirmed while BellSouth can deliver service to its own customers in one day. Additionally, it is unclear whether the two-day Firm Order Confirmation ("FOC") interval is included in the seven business day interval or whether the two days must be added to it.³ Whether the interval is seven or nine business days, the result is grossly disparate. This disparity illustrates why BellSouth cannot be permitted to rely on unsubstantiated and unilaterally developed intervals. BellSouth also cannot be allowed to claim its negotiated targets are appropriate because of the significantly skewed access to information and superior negotiating power enjoyed by BellSouth. Likewise, BellSouth cannot be permitted to rely upon historical performance of support systems provided to CLECs for which BellSouth has every incentive to incorporate inefficient and difficult processes and for which the current market conditions resoundingly demonstrate are inadequate to permit competition to gain a foothold.

AT&T's position is that there are retail equivalent functions for UNEs. See Exhibit 1.⁴ As BellSouth has made no showing that these are not analogous activities, and indeed has provided no data as the Commission required, AT&T urges the Commission to adopt these as the comparable intervals for UNEs.

BellSouth similarly attempts to skirt its responsibilities to provide benchmark studies in the areas of rejections, firm order confirmations, jeopardies and completion intervals. BellSouth states that it has no retail equivalent to these milestones for CLECs today and that BellSouth is undertaking modifications to its systems to record the appropriate date and time information for these milestones. In its December 22, 1998 comments, BellSouth proposes that this information, when completed, can be used as the

³ In Exhibit 5 of its Comments filed in this docket on December 22, 1998, BellSouth appears to include the FOC interval in the overall interval. However, in its SQM BellSouth states "The completion interval is the elapsed time from BST issues a FOC to BST's actual completion date. Additionally, in recent instructions to AT&T, BellSouth adds the FOC interval to the service interval. AT&T also has been instructed to add an additional 24 hours on an interim basis. See AT&T Exhibit 2.

⁴ Alternatively, the Commission could elect to implement the LCUG benchmarks for UNEs in Exhibit 3.

"surrogate for the retail analogue of this measurement." (See BellSouth Comments, Exhibit 3, p. 2) It is AT&T's position that, if properly implemented, this data will produce the retail analogue, eliminating the need for a surrogate. BellSouth further proposes that until this data is available, the "average data" should be used. Because no BellSouth data is currently provided in these areas, it is unclear as to what "average data" BellSouth is referring.

BellSouth was advised by the FCC in December of 1997 that it required BellSouth to provide results derived from analogous retail performance for these measures.⁵ BellSouth's decision to delay the production of this information until mid-1999 is no basis for relief from the Louisiana Commission's and the FCC's requirement for comparative data or standards with which to monitor BellSouth's performance. AT&T respectfully requests that the Commission order BellSouth to use LCUG's recommended benchmark intervals for these measurements until retail data has been received and approved by this Commission. Attached as Exhibit 3 are the LCUG performance benchmark recommendations which AT&T urges the Commission to adopt in the absence of data from BellSouth.

II. CONSEQUENCES, ENFORCEMENT AND DISPUTE RESOLUTION

A. Self-Executing Consequences for Discriminatory Performance Should Be Implemented Upon Completion of the Establishment of A Statistical Methodology, Performance Benchmarks if Necessary, and an audit of BellSouth's performance measurements plan and results.

The Staff's Final Recommendation dated August 14, 1998, which was adopted by the Commission, states at p. 25: "To help ensure the success of the performance measurements and standards established in this docket, the Commission should adopt remedies for non-performance." The Staff further recommended that the issue of

⁵ Federal Communications Commission, CC Docket No. 97-208, Application of BellSouth Corporation, et al. Pursuant to Section 271 of the Communications Act of 1934, as amended To Provide In-Region, InterLATA Services in South Carolina, page 74.

enforcement be studied further through additional workshops. As it has recognized, this Commission needs to institute a system of performance incentives that are meaningful to create an environment conducive to the development of competition. AT&T believes that applying the following principles to the design of a performance incentives and enforcement plan will assist in achieving such an environment:

- 1) Consequences should have a meaningful impact,
- 2) Plan is based on ILEC and measurement-specific performance,
- 3) Few automatic exclusions from consequences,
- 4) Minimal opportunities are present to "game" the system,
- 5) Consequences escalate with repeated occurrences of poor performance,
- 6) Additional consequences are applied for industry-wide performance.

AT&T further believes that the Commission can achieve its objectives by setting the following self-enforcing system of consequences in place: (1) any performance failure detected that is neither severe nor chronic should incur a consequence of \$25,000 payable immediately to the affected CLEC (*e.g.*, CLEC performance is worse than that of the applicable standard by more than one but less than two standard deviations); (2) any performance failure that is severe (*e.g.*, greater than two standard deviations worse than the applicable standard) or chronic (*e.g.*, three consecutive failures) generates a \$75,000 consequence payable to the affected CLEC; and (3) in those instances where the over all industry results show discrimination is evident (*e.g.*, more failures than would be expected due to random chance) a system of regulatory fines that escalate with repeated violation should be applicable and payable into the general fund of the state. For example, a regulatory consequence equivalent to \$1 per access line in the operating territory of BellSouth Louisiana could be applied and increased progressively for

repeated failures within a twelve month period (e.g., \$2/line for two failures, \$3/line for three failures in twelve months, etc.). The Commission also should consider substantially increasing the consequences payable to the CLEC upon BellSouth's receipt of Section 271 relief. Once such relief is granted, the incentive for providing stable and compliant behavior is substantially reduced.

The approach described above as to the consequences payable to the CLEC should be evaluated by using actual data to permit simulation of the outcome of the proposed system of consequences. The Commission must have data that can be utilized to evaluate this preceding alternative (and those other parties may propose) so that a fair and effective system can be specified. Attached as Exhibit 4 is additional information regarding AT&T's proposal for self-enforcing consequences to be applied to BellSouth for discriminatory performance. While AT&T believes its proposal provides an appropriate framework, the specifics of items such as the precise multiplier for repeated violations can be fine-tuned by the Commission.

The Commission Staff recognized that interdependent activities must be in place prior to the implementation of financial consequences, such as the establishment of a statistical methodology for comparing results and the establishment of benchmarks. However, the development of a plan for self-enforcing consequences can be implemented concurrently, if BellSouth provides access to data which only BellSouth possesses (or should possess to comply with the Act). AT&T urges the Commission to actively pursue a plan for consequences and their enforcement.

The results of BellSouth's compliance with the non-discrimination obligations of the Act, can be of no better quality than the performance measurements and underlying

data upon which the decisions are based. Therefore, AT&T recommends that the first of the comprehensive annual audits called for in the Commission's Order be scheduled as soon as possible. AT&T respectfully requests that the CLECs, along with BellSouth, be permitted to file comments with the Commission regarding the design and parameters of the audit. At a minimum, the initial audit should be an in depth and unbiased review of BellSouth's plan to verify that (1) BellSouth is collecting performance data according to agreed upon definitions and in a complete and comprehensive manner, (2) the reported results are calculated accurately and represented accurately, and (3) comparisons of results for CLECs to results for BellSouth's own retail operations have been properly implemented. The initial audit should include: (1) identification and review of all documentation for performance measurement definitions, calculations, exclusions, disaggregation, and data retention; (2) review of software procedures, including data collection, calculations, and data retention, for compliance with documentation; (3) validation of outputs to ensure that data is being properly collected, processed and retained; (4) validation of data retention procedures to assure appropriate CLEC access while protecting data from unauthorized access or inadvertent disclosure; and (5) validation of comparative methodologies to assure that parity is being properly demonstrated, including an assessment of the appropriate level of disaggregation and use of the appropriate statistical methodology. This initial audit should be performed by an independent third party or a team of independent auditors drawn from both BellSouth and participating CLECs with oversight and dispute resolution performed by the Commission Staff.

B. Dispute Resolution

The Commission's Order adopted the Staff's recommended dispute resolution process. In the case of complex or recurring problems or problems not identifiable through a measurement result, a dispute resolution process could well be appropriate. Examples of such problems include appropriate and timely access to the underlying raw data or to performance measurement reports.

However, an expedited dispute resolution process is not a replacement for a self-executing enforcement mechanism. Because even an expedited dispute resolution process could take weeks or longer, with a likely detrimental effect on CLEC's reputations and customers, it is simply not a viable substitute for consequences that are definite and swift. Indeed, the FCC stated recently⁶:

"[W]e would be extremely interested in whether such performance monitoring includes appropriate, self-executing enforcement mechanisms that are sufficient to ensure compliance with established performance standards. That is, as part of our public interest inquiry, we would inquire whether the BOC has agreed to private and self-executing enforcement mechanisms that are automatically triggered by noncompliance with the applicable performance standard without resort to lengthy regulatory or judicial intervention. *The absence of such enforcement mechanisms could significantly delay the development of local exchange competition* (emphasis added) by forcing new entrants to engage in protracted and contentious legal proceedings to enforce their contractual and statutory rights to obtain necessary inputs from the incumbent."

Accordingly, AT&T urges the Commission to supplement the dispute resolution mechanism with self-enforcing consequences.

⁶ Federal Communications Commission, CC Docket No. 98-121, released October 13, 1998, Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, para 364.

III. RAW DATA ISSUES

In the Commission Order, BellSouth was required to retain all data necessary to compute the performance measurements for three years to "allow the Commission and the CLECs the opportunity to examine the data and validate the results to the extent desired."⁷ In late June 1998, BellSouth began placing some "raw data" relating to AT&T on its Internet site. However, BellSouth has not provided the type CLEC-specific data underlying its performance reports and the associated information necessary to validate the report results as the Commission ordered. Indeed, Philip Porter, BellSouth's representative on performance measures issues, recently admitted in a deposition that BellSouth never intended for the raw data in the Data Warehouse to validate the accuracy of the performance reports. *See* page 66 of Exhibit 5, Deposition of Philip Porter, In the matter of Application of BellSouth Telecommunications, Inc. to Provide In-Region InterLata Services Pursuant to Section 271 of the Telecommunications Act of 1996, North Carolina Utilities Commission, Docket No. P-55 Sub 1022 at 66, November 6, 1998, ("Porter Dep."). The ability to verify the reports provided by BellSouth is crucial for CLECs. Simply put, due to the problems discussed below, there is no current way for CLECs to verify the accuracy of the data provided by BellSouth.

The raw data on BellSouth's web site is fraught with numerous deficiencies. A primary problem with the data is that BellSouth has not provided the information required for CLECs to use the data. BellSouth acknowledges that the data is provided in a format that is "complicated" and extremely difficult to use. Exhibit 5, Porter Dep. at 67. Some essential raw data has not been provided, and key information such as what data is included or excluded from particular calculations has not been made available. As a result of the many problems, AT&T has been unable to reconcile the performance results reported by BellSouth with the raw data found on the Internet site.

⁷ See Final Staff Recommendation, page 24.

On August 25, 1998, after being unable to decipher the AT&T data posted on BellSouth's web-site, AT&T requested a meeting with BellSouth for a "tutorial" on the Data Warehouse. At this meeting held on October 9, 1998, BellSouth stated that it was unable to provide a tutorial, and there was no documentation of the type of mapping and definitions required to be able to use the data. At AT&T's insistence, a cursory review of AT&T's raw data by BellSouth and AT&T was conducted at this meeting that revealed numerous deficiencies including data fields that did not match the instructions provided on the web-site, missing data, and numerous instances of data fields the contents of which could not be identified. Further, some SQM measurements, such as those for 911, billing and flowthrough were not available on the web-site.

AT&T and BellSouth compiled a lengthy issues list at the meeting, and both companies agreed that further research and meetings were required to solve these problems. Despite AT&T's repeated attempts to set up additional meetings to address its concerns, BellSouth did not meet with AT&T until December 21. At this meeting BellSouth addressed some of AT&T's concerns regarding one of the thirty-six reports offered in BellSouth's Service Quality Measurements (SQM). BellSouth committed to make additional data available by mid-January, 1999. Due to the difficulties it was experiencing in obtaining assistance from BellSouth, AT&T requested, pursuant to the Georgia Performance Measurements Order that BellSouth and AT&T assemble a Joint Investigative Team comprised of subject matter experts to conduct a root-cause analysis of the raw data issues.⁸ See Exhibit 6 for correspondence on this issue. AT&T is hopeful that the provisions of the Georgia Performance Measurements Order and the involvement of the Louisiana Commission will be instrumental in resolving these AT&T-specific raw data issues.

⁸ Georgia Public Service Commission Order, entered May 6, 1998, Docket No. 7892-U, In Re: Performance Measurements for Telecommunications Interconnection, Unbundling and Resale, p. 27 and pp. 30-31.

However, a second significant problem with the data provided by BellSouth on its Internet site is that BellSouth fails to provide performance data supporting its performance reports for CLECs in the aggregate. Without access to the aggregate data, neither the Commission nor CLECs have a means of verifying all of the data on which BellSouth will rely in its § 271 application. In addition, such aggregate information allows the Commission to see BellSouth's performance as a whole. Both aggregated and disaggregated data are necessary to get the complete picture.

Significantly, BellSouth's Internet site does not include any of the comparative data regarding BellSouth's performance for its own retail operations on which any determination of parity of performance for CLECs depend. BellSouth's Internet site, therefore, provides nothing whatsoever that would enable CLECs or the Commission to evaluate or verify BellSouth's performance reports.

As a final matter, BellSouth proposed in its Comments to use the AT&T raw data from its December 21, 1998 presentation to AT&T in the presentation BellSouth will make at the January, 1999 workshop in Louisiana. AT&T gives its permission for BellSouth to use that material at the workshop.

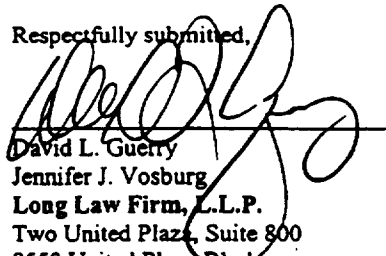
IV. CONCLUSION

AT&T encourages the Commission to continue its leadership in establishing performance measurements standards for evaluation of incumbent LEC's performance data. Toward that end, the Commission should insist that BellSouth abide by this Commission's order and perform the appropriate studies necessary for establishing performance benchmarks in those instances where there is no BellSouth data for direct comparison. The Commission should not accept BellSouth's excuses for not producing the benchmarks. The Commission also should adopt self-executing remedies for failure to meet performance measurements.

AT&T also urges the Commission require BellSouth to abide by its earlier order to retain all data for three years that is necessary to compute performance measurements and that the Commission and CLECs have the opportunity to examine the data and validate the results.

AT&T further requests that the Commission order a comprehensive audit as provided for in the Commission's Order entered on August 31, 1998 in this docket, with all parties having the opportunity to file comments with the Commission concerning the design and parameters of the audit.

Respectfully submitted,



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January 11, 1999

CERTIFICATE

I hereby certify that a copy of the foregoing has been delivered by hand, electronically, telefax, U.S. Mail or federal express, to all parties on the service list of this matter this 11th day of January, 1999.



David L. Guerry

Performance Penalties - Enforcement Matrix

Proposed Performance Penalties Methodology

The methodology for the imposition of penalties in response to non-compliance with performance measures needs to be straightforward, swiftly invoked and self-executing. It must also contain penalties sufficient to act as a deterrent to ILEC non-compliance. The methodology set forth below consists of three tiers of penalties:

Tier I

The primary purpose of this tier is to encourage the ILEC to provide conforming service quality on a consistent and on-going basis. The focus is upon individual measurement results for an individual CLEC. Tier I penalties are based on a set dollar amount per failed result and payable to the individual CLEC. The determination of a failure is based upon statistical comparison of results, applying the Commission-adopted tests for determining parity.

Tier II

The primary purpose of tier II penalties is to increase the incentives for prompt re-establishment conforming support delivered to the CLEC by the ILEC. Tier II penalties apply when a sufficient number of failed results (whether or not a result was eligible for a Tier I penalty) exist with respect to the experience of an individual CLEC such that a conclusion can be drawn with a high degree of statistical confidence that the number of failed measures exceeds the level expected through random measurement error. That is, there is a solid reason to believe that the CLEC is being treated in a discriminatory manner. Tier II penalties apply in addition to rather than in lieu of Tier I penalties.

Tier II penalties also increase with repeated demonstrations that ILEC treatment of the CLEC is potentially discriminatory. When Tier II penalties are applicable, prior support of the CLEC by the ILEC for the prior consecutive twelve months is examined. If it is the first time that a Tier II penalty is applicable in the prior 12 months then the otherwise applicable Tier I penalties are doubled to produce the applicable Tier II penalty (total penalty due is triple the Tier I penalty). If it is the second Tier II penalty occurring within a consecutive six month period then the applicable Tier II penalty is five times the otherwise applicable Tier I penalty. Finally, if it is the third (or greater) occurrence of a Tier II penalty in a consecutive twelve month period, the otherwise applicable Tier I penalty is increased eleven-fold. Tier II penalties, as with Tier I penalties, are payable to the individual CLEC.

Performance Penalties - Enforcement Matrix

Any Tier II violations occurring during the period that SWBT's compliance with Section 271 is under consideration should automatically disqualify the ILEC from receiving a recommendation for Section 271 approval by the state Commission. If support for the Section 271 application has already been granted, the Commission should provide expedited consideration for a proceeding to investigate degraded service delivered to the CLEC.

Tier III

Tier III penalties are imposed when there have been a sufficient number of failed results for the CLEC industry in the aggregate so that a conclusion of discriminatory treatment of the CLEC industry can be drawn, with a high degree of statistical confidence. If such a condition exists, the substantial penalties are justified due to the potential harm to the competitive market. Tier III penalties are paid into a designated neutral fund (e.g. Universal Service) rather than to any individual CLEC.

As with Tier II penalties, the Tier III penalties appropriately increase with increased findings of discriminatory performance by the ILEC. If within a consecutive twelve month period, only one conclusion is reached that the CLEC industry has been treated in a discriminatory manner, the Tier III penalties are \$.50/access line. If two such conclusions are reached within a consecutive six month period, the Tier III penalties are \$1.00/access line. Three or more findings within a consecutive twelve month results in a \$2.00/access line Tier III penalty.

Tier III penalties are imposed in addition to the Tier I and Tier II penalties payable to individual CLECs.

Any Tier III violation should foreclose recommendation of Section 271 approval by a State Commission. If a positive recommendation has already been made, then the state Commission should immediately undertake an expedited proceeding to determine whether to recommend to the FCC that such approval be revoked and to consider whether any other further penalties and remedial actions are warranted.

The specific details of each of the three tiers of penalties are set forth in the following charts.

Performance Penalties - Enforcement Matrix

Any Tier II violations occurring during the period that SWBT's compliance with Section 271 is under consideration should automatically disqualify the ILEC from receiving a recommendation for Section 271 approval by the state Commission. If support for the Section 271 application has already been granted, the Commission should provide expedited consideration for a proceeding to investigate degraded service delivered to the CLEC.

Tier III

Tier III penalties are imposed when there have been a sufficient number of failed results for the CLEC industry in the aggregate so that a conclusion of discriminatory treatment of the CLEC industry can be drawn, with a high degree of statistical confidence. If such a condition exists, the substantial penalties are justified due to the potential harm to the competitive market. Tier III penalties are paid into a designated neutral fund (e.g. Universal Service) rather than to any individual CLEC.

As with Tier II penalties, the Tier III penalties appropriately increase with increased findings of discriminatory performance by the ILEC. If within a consecutive twelve month period, only one conclusion is reached that the CLEC industry has been treated in a discriminatory manner, the Tier III penalties are \$.50/access line. If two such conclusions are reached within a consecutive six month period, the Tier III penalties are \$1.00/access line. Three or more findings within a consecutive twelve month results in a \$2.00/access line Tier III penalty.

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The specific details of each of the three tiers of penalties are set forth in the following charts.

Performance Penalties - Enforcement Matrix

Results Assessment	Prior to Section 271 Approval	Following Section 271 Approval
<p>Tier I Parity Test (CLEC Specific)</p> <p>Measurement results for each CLEC are reviewed.</p> <p>For any particular CLEC, Tier I penalties apply when any measurement results are out of compliance</p>	<p>ILEC pays a penalty to the CLEC in the amount of \$25,000 per measurement or \$75,000 per measurement, based on the parity criteria established by the Commission.</p> <p>Pre-271, ILEC must report at least 3 months of data that meet the performance criterion for each measure at meaningful volumes.¹</p>	
<p>Tier II Discrimination Test (CLEC Specific)</p> <p>Measurement results for each CLEC are reviewed.</p> <p>For any particular CLEC, Tier II penalties apply when a sufficient number of measurement results are out of compliance so that a conclusion of discriminatory treatment of the CLEC may be reached with high statistical confidence.¹</p>	<p>Tier I penalties apply.</p> <p>In addition to the Tier I penalties, incremental penalties are paid to CLECs where CLEC-specific discrimination is found, as follows:</p> <ul style="list-style-type: none"> a) First Tier II violation within 12 consecutive months – 2 times the Tier I penalties b) Second Tier II violation within 12 consecutive months – 5 times the Tier I penalties c) Third Tier II violation within 12 consecutive months – 11 times Tier I penalties <p>Commission recommends against a finding of Section 271 compliance in its consultation to the FCC. Undertakes expedited investigation, at the request of the affected CLEC(s).</p>	<p>Tier I penalties apply.</p> <p>In addition to the Tier I penalties, incremental penalties are paid to CLECs where CLEC-specific discrimination is found, as follows:</p> <ul style="list-style-type: none"> a) First Tier II violation within 12 consecutive months – 2 times the Tier I penalties b) Second Tier II violation within 12 consecutive months – 5 times the Tier I penalties c) Third Tier II violation within 12 consecutive months – 11 times Tier I penalties <p>Commission initiates, at the request of affected CLEC(s) expedited investigation of degraded service and its impact on the CLEC(s).</p>

Performance Penalties - Enforcement Matrix

Results Assessment	Prior to Section 271 Approval	Following Section 271 Approval
<p>Tier III Discrimination Test (CLEC Industry in the Aggregate)²</p> <p>Performance data for the CLEC industry in the aggregate is reviewed.</p> <p>Tier III penalties apply when a sufficient number of measurement results are out of compliance so that a conclusion of discriminatory treatment of the CLEC industry may be reached with a high degree of statistical confidence.¹</p>	<p>A "market suppression penalty" is applied and paid to a general fund (e.g., Universal Service) and the ILEC is prohibited from benefiting from the fact that a payment was made.¹</p> <p>Commission recommends against a finding of Section 271 compliance in its consultation to the FCC.</p>	<p>A "market suppression penalty" is applied and paid to a general fund (e.g., Universal Service) and the ILEC is prohibited from benefiting from the fact that a payment was made.¹</p> <p>Commission undertakes an expedited investigation regarding whether additional penalties and remedial actions are necessary and to determine whether it should recommend to the FCC that Section 271 approval be suspended.</p>

Notes:

1. Critical values for comparison of individual measurements should be based on an equalized risk approach (where risk of Type I error is the same as risk of Type II error), or based on a constant Type I error rate of no less than 15%. Any measurement with a z-statistic that is greater than the critical value is considered to be "out of parity" or a "failed result." This approach to determining Tier I liquidated damages must be supplemented in a pre-271 environment by a more discriminating analysis for purposes of any decision about the ILEC's long distance entry. The ILEC should be required to show at least 3 months of satisfactory performance on each measure (i.e. within one standard deviation of parity or other applicable benchmark) at meaningful volumes. The ILEC also should not be permitted to have any Tier II or Tier III violations for at least the 3 months preceding a decision to support a Section 271 application.

The number of measurements that are permitted to be out of parity before reaching a conclusion of overall non-compliance – triggering Tier II or Tier III penalties – is determined using the methodology described in the affidavit of Dr Colin Mallows (see Initial Comments of AT&T Corp. CC Docket 98-56, copy attached). This methodology provides a 95% confidence level that a Tier II or Tier III penalty will not be based on random variation in the data.

2. Tier I and II penalties are paid to individual CLECs even if a Tier III violation is found.

Performance Penalties - Enforcement Matrix

3. Provisions may be needed to increase the size of the "market suppression penalty" as the market matures and when repeated instances of unsatisfactory performance occur (See "Market Suppression Penalty Adjustments").

Market Suppression Penalty Adjustment:

As the number of CLECs entering the market increases and as more time has passed since initial market entry, there is potential for more substantial harm to the operation of the competitive marketplace as a result of discriminatory treatment of the CLEC industry by the ILEC. Likewise, repeated finding of overall discrimination calls for more substantial incentives to correct behavior. The "market suppression" penalty should reflect this reality.

The following treatment of the market suppression penalty is one way to address this issue:

1. Determine the number of times in the prior 3, 6 and 12 months that an overall discrimination finding resulted (ILEC compared to the aggregate CLEC industry).
2. Determine the applicable penalty from the following table:

Condition	Applicable Market Suppression Penalty
One finding in the last 3 months	\$.50/access line
Two findings in the last 6 months	\$1.00/access line
More than two finding in the last 12 months	\$2.00/access line

Note that once an overall finding of discrimination occurred, the market suppression penalty would apply until none of the conditions in the prior table are applicable. Thus, a single finding would result in payment of the penalty for the following 3 months. A second finding of discrimination would increase the penalty to the second level until the 6 month period did not apply, and then decrease the penalty (for the second finding) so long as the 3 month period still applied. A third finding of discrimination would increase the penalty to the third level until the 12 month period did not apply, and then decrease the penalty in steps (for the second and third findings) so long as the 6 and 3 month periods still applied.